Calendar No. 579

100TH CONGRESS
2d Session

SENATE

REPORT
100-296

LAND CONVEYANCES WITHIN THE ARCTIC NATIONAL WILDLIFE REFUGE

MARCH 10, 1988.—Ordered to be printed

Filed under authority of the order of the Senate of March 4 (legislative day, March 2), 1988

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1493]

The Committee on Energy and Natural Resources to which was referred the bill (S. 1493) to clarify the authority of the Secretary of the Interior to make land exchanges within the Arctic National Wildlife Refuge, having considered the same, reports favorably thereon with an amendment to the text and an amendment to the title and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. Subsection 1302(h) of the Alaska National Interest Lands Conservation Act (16 U.S.C. Sec. 3192(h)) is amended by redesignating the subsection as paragraph "(h)(1)" and by adding the following new paragraph:

"(2) Nothing in this Act or any other provision of law shall be construed as authorizing the Secretary to convey, by exchange or otherwise, lands or interest in lands within the Coastal Plain of the Arctic National Wildlife Refuge (other than land validly selected prior to July 28, 1987), without prior approval by Act of Congress.".

2. Amend the title so as to read:

To clarify the authority of the Secretary of the Interior to convey lands by exchange, or otherwise, within the Arctic National Wildlife Refuge.

S 313-5

Purpose of the Measure

The purpose of S. 1493, as ordered reported, is to prohibit the Secretary of the Interior from conveying, by exchange or otherwise, lands or interest in lands with the Coastal Plain of the Arctic National Wildlife Refuge, Alaska, other than lands validly selected prior to July 28, 1987, without prior approval by Act of Congrress.

Background and Need

The Department of the Interior (DOI) and several Alaska Native Corporations (Corporations) have entered into a tentative agreement whereby DOI would exchange oil and gas interests in certain tracts within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) for certain Corporation surface estate lands in several Alaska national wildlife refuges. The proposal calls for approximately 891,000 acres of Corporation refuge inholdings to be exchanged for approximately 166,000 acres of Federal oil and gas interests. The land and interests to be exchanged are valued by DOI at $538.7 million.

It is the Committee's understanding that the Department is currently preparing a legislative environmental impact statement on these exchanges. The Committee has not considered these proposed exchanges and takes no position regarding the merits of such proposals.

The Committee feels strongly, however, that no exchange should be undertaken in this important area unless approved, in advance, by an Act of Congress. The Congress clearly reserved to itself the right to decide if and when oil and gas leasing would be permitted in ANWR. This legislation would insure that such a Congressional prerogative is preserved.

In several recent appearances before the Committee, Secretary Hodel has expressed his view that any exchange involving lands in ANWR would not be undertaken without prior Congressional approval. The Committee commends the Secretary for his position on this matter and notes that this bill is consistent with his views.

Legislative History

S. 1493 was introduced by Senator Bradley on July 14, 1987. No hearings were conducted on this measure. Hearings were conducted before the Subcommittee on Public Lands, National Parks and Forests on H.R. 2629 on October 20, 1987.

At a business meeting on February 25, 1988, the Senate Committee on Energy and Natural Resources ordered S. 1493, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on February 25, 1988, by a unanimous vote of a quorum present, recommends that the Senate pass S. 1493, if amended, as described herein.

The rollcall vote on reporting the measure was 16 yeas, 0 nays as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Metzenbaum	
Mr. Melcher*	
Mr. Bradley	
Mr. Bingaman*	
Mr. Wirth	
Mr. Fowler*	
Mr. Conrad	
Mr. McClure	
Mr. Domenici*	
Mr. Wallop*	
Mr. Murkowski	
Mr. Nickles*	
Mr. Evans	

*Indicates voted by proxy.

COMMITTEE AMENDMENT

During the consideration of S. 1493, the Committee adopted an amendment in the nature of a substitute. The substitute is identical to the language included in the ANWR Coastal Plain Oil and Gas Leasing legislation which was ordered reported from the Committee on February 25. That language, in turn, was taken from, and is identical to, a provision contained in H.R. 2629, the House-passed Alaska Submerged Lands Act.

The amendment makes a number of minor changes to S. 1493 as introduced. Most significantly, all conveyances by the Secretary in ANWR, not just exchanges, are subject to prior congressional approval.

The amendment makes an exception to this limitation on the Secretary's administrative exchange authority for lands and interests in lands which have been validly selected within the coastal plain prior to July 28, 1987.

The Committee is aware that the Kaktovik Inupiat Corporation (through its selection of land pursuant to ANSCA), the Arctic Slope Regional Corporation (through a land exchange agreement with the Department) and individual Alaska Natives (through their filing of applications for Native allotments), have claims to land within the coastal plain which antedate July 28, 1987. Nothing in section 201 is intended to prohibit the Secretary of the Interior from adjudicating the validity of any of these claims, or from conveying land located within the coastal plain of any of the aforementioned parties to the extent such conveyances are otherwise lawful and proper.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 7, 1988.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1493, a bill to clarify the authority of the Secretary of the Interior to make land exchanges within the Arctic National Wildlife Refuge (ANWR). The bill was ordered reported by the Senate Committee on Energy and Natural Resources on March 2, 1988.

S. 1493 would prohibit the Secretary of the Interior from conveying or exchanging federal lands in ANWR without prior approval of the Congress.

We estimate that, relative to current law, enactment of this bill would result in no cost or savings to the federal government or to state or local governments. If the Congress acts in the future to allow oil and gas leasing in ANWR, this bill, by prohibiting the exchange of ANWR land, would ensure that any receipts generated from such leasing activity would accrue to the federal government.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES. L. BLUM,
Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carryout out S. 1493. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork will result from the enactment of S. 1493, as reported.

EXECUTIVE COMMUNICATIONS

On September 22, 1987, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 1493. These reports had not been received at the time the report on S. 1493 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate.

CHANGES IN EXISTING LAW

In compliance with pararaph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1493, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is

printed in italic, existing law in which no change is proposed is shown in roman):

ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

(P.L. 96-487, 94 Stat. 2430)

* * * * * * *

TITLE XIII—ADMINISTRATIVE PROVISIONS

* * * * * * *

LAND ACQUISITION AUTHORITY

SEC. 1302. (a) GENERAL AUTHORITY.—Except as provide in subsections (b) and (c) of this section, the Secretary is authorized, consistent with other applicable law in order to carry out the purposes of this Act, to acquire by purchase, donation, exchange, or otherwise any lands within the boundaries of any conservation system unit other than National Forest Wilderness.

* * * * * * *

(h)*(1)* EXCHANGE AUTHORITY.—Notwithstanding any other provision of law, in acquiring lands for the purposes of this Act, the Secretary is authorized to exchange lands (including lands within conservation system units and within the National Forest System) or interests therein (including Native selection rights) with the corporations organized by the Native Groups, Village Corporations, Regional Corporations, and the Urban Corporations, and other municipalities and corporations or individuals, the State (acting free of the restrictions of section 6(i) of the Alaska Statehood Act), or any Federal agency. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the property exchanged, except that if the parties agree to an exchange and the Secretary determines it is in the public interest, such exchanges may be made for other than equal value.

(2) Nothing in this Act or any other provision of law shall be construed as authorizing the Secretary to convey, by exchange or otherwise, lands or interest in lands within the coastal plain of the Arctic Natonal Wildlife Refuge (other than land validly selected prior to July 28, 1987), without prior approval by Act of Congress.

○

Calendar No. 580

100TH CONGRESS
2d Session

SENATE

REPORT
100-297

GREAT SMOKY MOUNTAINS WILDERNESS ACT

MARCH 10, 1988.—Ordered to be printed

Filed under authority of the order of the Senate of March 4 (legislative day, March 2), 1988

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 1495]

The Committee on Energy and Natural Resources, to which was referred the act (H.R. 1495) to designate certain lands in Great Smoky Mountains National Park as wilderness, to provide for settlement of all claims of Swain County, North Carolina, against the United States under the agreement dated July 30, 1943, and for other purposes, having considered the same, reports favorably thereon with an amendment to the text and recommends that the act, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Great Smoky Mountains Wilderness Act".

SEC. 2. DESIGNATION AND ADMINISTRATION.

(a)(1) In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et. seq.), certain lands in Great Smoky Mountains National Park, North Carolina and Tennessee, which comprise approximately four hundred and nineteen thousand acres, and certain lands comprising approximately forty-six thousand acres, formerly owned by the Tennessee Valley Authority and Cities Service Company, as depicted on the map entitled "Wilderness Plan, Great Smoky Mountains National Park, North Carolina and Tennessee", numbered 133/20,003-L DSC and dated August

S313-6

1987, shall be designated as wilderness and therefore as components of the National Wilderness Preservation System. The designation shall be effective on the date provided in section 6. Such lands shall be known as the Great Smoky Mountains Wilderness.

(2) Notwithstanding any other provision of this section, cemeteries within the Great Smoky Mountains National Park shall not be included within the wilderness designated by this Act, and shall be managed as provided in the General Management Plan for the Great Smoky Mountains National Park, adopted in January 1982.

(b)(1) Subject to existing valid rights, the area described in subsection (a) shall be administered by the Secretary of the Interior in accordance with the provisions of the Wilderness Act governing areas designated by such Act as wilderness, except that reference to the Secretary of Agriculture shall be deemed, where appropriate, to be a reference to the Secretary of the Interior.

(2) The Secretary of the Interior shall provide for permanent special access to any cemetery generally located within the forty-six thousand acre area described in section 2(a). Such access shall be provided in the same manner and to the same locations as the access provided as of the enactment of this Act.

(3) All roads and trails within the forty-six thousand acre area depicted on the map referenced in subsection (a) which are not currently open to vehicular use by the public, as of the date of enactment of this Act, shall not be used by motorized vehicles, except for vehicles owned or operated by the National Park Service.

(c) As soon as practicable after the effective date of this Act, the Secretary of the Interior shall file a map and a legal description of the area described in subsection (a) with the Energy and Natural Resources Committee of the United States Senate and the Interior and Insular Affairs Committee of the United States House of Representatives. The map and legal description shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in the map and legal description may be made. Such map and legal description shall be on file and available for public inspection in the office of the Director of the National Park Service, Department of the Interior, and in the office of the Superintendent of Great Smoky Mountains National Park.

(d) The Secretary of the Interior shall identify and evaluate all reserved rights which may be retained by any person within the area described in subsection (a). Within 9 months after the enactment of this Act the Secretary of the Interior shall submit a report to Congress regarding the status of such reserved rights.

(e) Congress does not intend that designation of the Great Smoky Mountains Wilderness lead to the creation of protective perimeters or buffer zones around such wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within the wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

(f) Designation of the Great Smoky Mountains Wilderness pursuant to this Act shall not affect motorized recreation or other activities on Fontana Reservoir.

SEC. 3. RIGHTS AND EASEMENTS RETAINED BY THE TENNESSEE VALLEY AUTHORITY.

(a) The Secretary of the Interior and the Tennessee Valley Authority shall enter into an agreement which provides for (1) the Authority to transfer to the Secretary all right retained by the Authority in a tract of land comprising approximately forty-four thousand acres formerly entrusted to it and transferred to the Secretary by an Agreement of transfer dated March 31, 1948, saving and except any property rights necessary to carry out the activities described in subsection (b), and for (2) the Secretary to grant an easement across national parklands to the Authority necessary to carry out the activities described in subsection (b)(2) which involve national parklands outside such tract. Such agreement, as amended, will be in accordance with National Park Service rules and regulations and subject to such reasonable terms and conditions as are necessary for the management, protection, and use of park resources, and shall have the same force and effect as if included in this Act.

(b) Nothing in this Act shall prevent or impair activities undertaken by, on behalf of, or in cooperation with the Authority in exercise of the following rights, including those retained or granted pursuant to subsection (a), to—

(1) operate and maintain Fontana Dam and Reservoir;

(2) operate and maintain the electric power transmission lines and rights-of-way which run west and northwest from Fontana Dam and which run north and northwest from Calderwood Dam;

(3) have lateral access to such transmission lines and rights-of-way from the area of the park south and west of the rights-of-way;

(4) raise the water level of Fontana Reservoir to the probable maximum flood level for flood control operations and to have access to the area below that elevation at all times;

(5) install, maintain, and operate gages to measure streamflow and rainfall and collect hydrometeorological, air quality, and other information; and

(6) install and maintain navigation markers along the north shore of Fontana Reservoir.

SEC. 4. SETTLEMENT WITH RESPECT TO A ROAD ALONG THE NORTH SHORE OF FONTANA RESERVOIR.

(a) The Congress finds that Swain County, North Carolina, claims certain rights acquired pursuant to an agreement dated July 30, 1943 (hereafter in this section referred to as the "agreement of July 30, 1943"), between the Secretary of the Interior of the United States, the State of North Carolina, the Tennessee Valley Authority, and Swain County, North Carolina, which provided, on certain conditions, that the Department of the Interior would construct a road along the north shore of Fontana Reservoir to replace a road flooded by the construction of Fontana Dam and the filling of the reservoir, which road has not been completed.

(b) In order to settle and quiet all claims arising out of the agreement made July 30, 1943, the following provisions are made:

(1) the Secretary of the Treasury is authorized to pay to Swain County, North Carolina, the sum of $9,500,000. Such sum shall be deposited in an account in accordance with the rules and regulations established by the North Carolina Local Government Commission. The principal of such sum may only be expended by Swain County under a resolution approved by an affirmative vote of two-thirds of the registered voters of Swain County. Interest earned on the unexpended principal of such sum may only be expended by a majority vote of the duly elected governing commission of Swain County;

(2) the Secretary of the Treasury is also authorized to pay to Swain County such sums as may be necessary to retire the balance, as of the date of enactment of this Act, of the loan (Case numbered 388756600118, Code numbered 9701) obtained on October 12, 1976, from the Farmers Home Administration. The county may not expend such sums for purposes other than the retiring of such loan; and

(3) the payments provided for in this section shall constitute full and complete settlement of all claims of Swain County, North Carolina, against the United States of America, the Department of the Interior, and the Tennessee Valley Authority arising out of the agreement dated July 30, 1943. The United States of America, its departments and agencies, including the Department of the Interior, the National Park Service, and the Tennessee Valley Authority, hereafter shall be deemed to have performed the agreement of July 30, 1943, in every particular. No money appropriated pursuant to this Act shall be paid to or received by an agent or attorney on account of services rendered in connection with the claim settled by this subsection.

SEC. 5. HISTORICAL MARKER.

The Secretary of the Interior is authorized to allocate funds and personnel necessary to place a suitable marker at or near the approach to the Cherokee Qualla Reservation, at Soco Gap, in recognition of the historical importance of Soco Gap and the contributions to history of the Cherokee Nation.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 7. EFFECTIVE DATE.

(a) The designation of the four hundred and nineteen thousand acre area described in section 2(a) as wilderness shall take effect on the date on which Swain County has received full payment of the sums authorized to be appropriated in section 4 of this Act.

(b) The designation of the forty-six thousand acre area described in section 2(a) as wilderness shall take effect on the date on which:

(1) Swain County has received full payment of the sums authorized to be appropriated in section 4 of this Act; and

(2) all valid reserved rights retained by any person within such forty-six thousand acre area have been extinguished or transferred to the Secretary of the Interior (but not later than October 1, 1991).

(c) Effective upon the date of enactment of this Act, until the designation of wilderness described in section 2(a) takes effect, the four hundred and sixty-five thou-

sand acre area described in section 2(a) shall be managed in accordance with the General Management Plan for the Great Smoky Mountains National Park, adopted in January 1982 (but not including any amendment of or revision to such plan).

Purpose of the Measure

The purpose of H.R. 1495 is to designate certain lands in Great Smoky Mountains National Park as wilderness, and to provide for settlement of all claims of Swain County, North Carolina, against the United States under the agreement dated July 30, 1943.

Background and Need

The Great Smoky Mountains National Park was established in 1934. The 520,000-acre park contains diverse biology and wildlife, including over 100 species of trees and several species of rare or endangered animals. The park is among the Nation's most visited parks, with an estimated 9.8 million visitors in 1986.

The Wilderness Act of 1964 required the Secretary of the Interior to review every roadless area of 5,000 contiguous acres or more in the National Park System for the suitability or nonsuitability of each area for preservation as wilderness. In accordance with those requirements, a review of roadless areas in the Great Smoky Mountains National Park was completed and a recommendation was submitted to Congress in 1974. That recommendation proposed the designation of 390,500 acres as wilderness. For the most part, the Park Service has managed these lands since that time as wilderness.

Although legislation has been introduced from time to time, Congress has taken no action to designate wilderness in the Great Smoky Mountains National Park. In 1978, the Park Service recommended that Congress postpone any wilderness designation in the park until it could resolve a long-standing dispute with North Carolina regarding the construction of a road along the north shore of Fontana Lake.

That dispute began in 1943, when the Department of the Interior, the Tennessee Valley Authority (TVA), the State of North Carolina and Swain County, North Carolina entered into an agreement involving compensation for a road which was flooded in the creation of Fontana Lake. The lake was established to provide electricity to the area and involved the flooding of homesteads, towns, roads and cemeteries. Forty-four thousand acres of land which were acquired for the development of the lake but were not flooded were transferred by TVA to the Park Service for addition to the southern portion of the Great Smoky Mountains National Park.

Among these 44,000 acres of land were several family cemeteries which are now only accessible by boat across the lake or by a long hike across rugged terrain. The Park Service currently provides access to the cemeteries by boats and four-wheel-drive vehicles several times a year.

Under the terms of a 1943 agreement, the Department of the Interior promised that if Congress appropriated the funds, it would build a road north of the new Fontana Lake to compensate Swain County for the loss of the existing road. Engineering studies later revealed that construction and maintenance of a road at this site

would be technically difficult, extremely expensive, and environmentally damaging. To date, only a small portion of the road has been built.

The dispute on how, where, and if the road should be built has been ongoing since the 1943 agreement. Swain County has been looking for compensation per the original agreement; others have been concerned about the environmental damage incurred by building a road through rugged terrain.

In 1980, the Department of the Interior agreed to support a cash settlement of $9.5 million to Swain County in lieu of the road being built. However, the agreement was conditional upon direct congressional appropriation, and Congress has not appropriated the funds.

Legislative History

H.R. 1495 passed the House of Representatives on September 29, 1987. The Senate companion measure, S. 693, was introduced by Senator Sasser on March 10, 1987. Senator Helms introduced a related bill, S. 695, also on March 10, 1987. A hearing was held on S. 693 and S. 695 by the Subcommittee on Public Lands, National Parks and Forests on June 23, 1987.

At a business meeting on February 25, 1988, the Senate Committee on Energy and Natural Resources ordered H.R. 1495, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on February 25, 1988, by a majority vote of a quorum present, recommends that the Senate pass H.R. 1495, if amended, as described herein.

The rollcall vote on reporting the measure was 11 yeas, 7 nays as follows:

YEAS	NAYS
Mr. Johnston	Mr. McClure
Mr. Bumpers	Mr. Domenici*
Mr. Ford	Mr. Wallop*
Mr. Metzenbaum	Mr. Murkowski
Mr. Melcher*	Mr. Nickles*
Mr. Bradley	Mr. Hecht
Mr. Bingaman	Mr. Evans
Mr. Wirth	
Mr. Fowler*	
Mr. Conrad	
Mr. Weicker*	

* Indicates voted by proxy.

Committee Amendments

During the consideration of H.R. 1495, the Committee adopted an amendment in the nature of a substitute. The substitute includes a number of technical and conforming amendments and two substantive changes.

Tennessee Valley Authority

The substitute adds language which specifies that the Secretary of the Interior and the Tennessee Valley Authority (TVA) enter into an agreement which would provide TVA access to certain of its facilities relating to the operation of Fontana Dam and Reservoir. The Secretary is directed to grant an easement across a portion of the park (outside the wilderness) to allow TVA to operate and maintain Fontana Dam and Reservoir, operate and maintain transmission lines and rights-of-way, install and maintain gages and carry out other miscellaneous activities related to the dam and reservoir.

In exchange for the easement, the TVA will transfer most of its remaining retained rights in a 44,000-acre tract of land, which will be designated as wilderness. None of these rights have been exercised by TVA for a number of years.

Cemeteries

The substitute also excludes cemeteries in the Great Smoky Mountains National Park from wilderness designation. The cemeteries will continue to be managed according to the 1982 General Management Plan for the park.

Additional information on the substitute is included in the "Section-by-Section Analysis" of this report.

Section-by-Section Analysis

Section 1 provides that this Act may be cited as the "Great Smoky Mountains Wilderness Act."

Section 2(a)(1) specifies that the lands to be designated as wilderness are those depicted on a map entitled "Wilderness Plan, Great Smoky Mountains National Park, North Carolina and Tennessee", number 133/20,003–L DSC and dated August 1987. The designation shall be effective in accordance with the provisions of section 7. The lands shall be known as the Great Smoky Mountain Wilderness.

Section 2(a)(2) provides that cemeteries within the Great Smoky Mountains National Park will not be included in the wilderness designated by the act. It further directs that the cemeteries be managed in accordance with the General Management Plan for the Great Smoky Mountains National Park, which was adopted in January, 1982.

Section 2(b)(1) directs the Secretary to administer the wilderness areas designated under the provisions of the Wilderness Act, subject to valid existing rights.

Section 2(b)(2) directs the Secretary to provide permanent special access to the cemeteries or their vicinities in the same manner and frequency as provided by the Park Service on the date of enactment of this act. The Park Service currently provides access to the cemeteries by boat and four-wheel drive vehicle several times a year.

Section 2(b)(3) directs that all road in the southern 46,000 acre area of the designated wilderness which are not currently open to public vehicular traffic should not be used by motorized vehicles, except those operated by the Park Service.

Section 2(c) directs the Secretary to provide a map and legal description of the area to be designated as wilderness to the appropriate Committees of Congress as soon as practicable after the effective date of this act and to maintain such a map on file.

Section 2(d) directs the Secretary to identify and evaluate all reserved rights within the area designated as wilderness. The Secretary shall submit to the Congress a report on the status of such reserved rights 9 months after enactment.

Section 3 directs the Secretary and the Tennessee Valley Authority (TVA) to enter into an agreement to allow TVA access to certain of its facilities relating to the operation and maintenance of Fontana Dam and Reservoir. A more complete description of this section is found in the Committee Amendments section of this report.

Section 4(a) finds that Swain County, North Carolina, claims certain rights from an agreement dated by July 30, 1943, between the Secretary of the Interior, the State of North Carolina, the Tennessee Valley Authority and Swain County, North Carolina, concerning the construction of a road to replace one flooded by the construction of Fontana Dam and the filling of the reservoir.

Section 4(b) provides for the settlement of Swain County's claims.

Section 4(b)(1) authorizes and directs the Secretary of the Treasury to pay the sum of $9,500,000 to Swain County. The principal may be expended by Swain County only by a resolution approved by an affirmative vote of two-thirds of the County's registered voters. The interest may only be expended by a majority vote by the county's duly elected governing commission.

Section 4(b)(2) directs the Secretary of the Treasury to pay Swain County such sums as may be necessary to retire the balance on the loan (case numbered 388756600118, code numbered 9701) obtained on October 12, 1976, from the Farmers Home Administration. The County may only expend the funds to retire the loan.

Section 4(b)(3) directs that the payment and relief from liability shall completely settle all claims of Swain County arising from the 1943 agreement. No money appropriated shall be spent for any agent or attorney for services rendered in connection with the settlement of the claim by Swain County.

Section 5 authorizes the Secretary of the Interior to place a marker at or near the entrance of the Cherokee Valley Reservation at Soco Gap. The marker would recognize the historical importance of Soco Gap and the contributions of the Cherokee Nation.

Section 6 authorizes appropriation of such sums as may be necessary to carry out the provisions of the act.

Section 7(a) provides that the effective date of the wilderness designation for the 419,000-acre area described in section 2(a) shall be the date on which Swain County, North Carolina receives the full payment authorized in section 4.

Section 7(b) establishes that the effective date of the wilderness designation for the 46,000-acre area described in section 2(a) shall be the date on which Swain County, North Carolina receives the full payment authorized in section 4, and when all reserved rights retained have been extinguished or transferred to the Secretary of the Interior, but in no event later than October 1, 1991.

Section 7(c) specifies that until designation of wilderness takes effect, the 465,000-acre area described in section 2(a) will be managed in accordance with the General Management Plan for the Great Smoky Mountains National Park, which was adopted January 1982, not including any amendments to the plan.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

March 9, 1988

Honorable J. Bennett Johnston, Jr.
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached cost estimate for H.R. 1495, the Great Smoky Mountains Wilderness Act.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

James L. Blum
Acting Director

cc: Honorable James A. McClure
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

March 9, 1988

1. BILL NUMBER: H.R. 1495

2. BILL TITLE: Great Smoky Mountains Wilderness Act

3. BILL STATUS:

As ordered reported by the Senate Committee on Energy and Natural Resources on February 25, 1988.

4. BILL PURPOSE:

The Act would designate 455,000 acres of Great Smoky Mountains Park as wilderness and would provide permanent special access to certain cemetery sites not included in the wilderness area. The bill would direct the Tennessee Valley Authority (TVA) and the Department of the Interior (DOI) to negotiate for the transfer to DOI of certain legal rights and easements on an additional 44,000 acres of land. DOI would be required to identify, evaluate, and report to congress within nine months of this act's passage, any reserved rights retained by any person within the wilderness area.

The act would provide for the settlement of all claims of Swain County, North Carolina, against the United States under the agreement dated July 30, 1943, including a payment of $9.5 million to the county. The county would also be relieved of certain repayments to the Farmers Home Administration (FmHA).

The wilderness designations authorized in the bill would become effective only after other specified terms of the act have been met.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

(by fiscal year, in millions of dollars)

	1989	1990	1991	1992	1993
Direct Spending: Forgiveness of FmHA Loan					
Estimated Budget Authority	0.1	0.1	0.1	0.1	0.1
Estimated Outlays	0.1	0.1	0.1	0.1	0.1
Authorization: Payment to Swain County					
Estimated Authorization Level	9.5	---	---	---	---
Estimated Outlays	9.5	---	---	---	---

The costs of this bill fall within budget functions 300.

Basis of Estimate:

This estimate assumes that H.R. 1495 would be enacted and appropriations provided so that the federal government would make the authorized $9.5 million payment to Swain County in fiscal year 1989. It is also assumed that Swain County would repay the full debt to FmHA in the absence of this bill. The outstanding principal balance is about $1.6 million, and payments are estimated to be about $130,000 annually from 1988 through 2007. Other provisions of the bill would have no significant budget impact.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENTS:

The costs of the bill to the federal government, shown above, are all benefits to Swain County, North Carolina. The bill would result in no costs to state or local governments.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE: None.

9. ESTIMATE PREPARED BY: Theresa Gullo (226-2860)

10. ESTIMATE APPROVED BY:

James L. Blum
Assistant Director
for Budget Analysis

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 1495. The act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 1495, as reported.

Executive Communications

The pertinent legislative report sent from the Secretary of the Interior to the House Interior and Insular Affairs Committee on H.R. 1495 as well as the pertinent legislative report on the Senate companion measure, S. 693, are set forth below:

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 23 1987

Honorable Morris K. Udall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This responds to your request for our views on H.R. 1495, a bill, "To designate certain lands in Great Smoky Mountains National Park as wilderness, to provide for settlement of all claims of Swain County, North Carolina, against the United States under the agreement dated July 30, 1943, and for other purposes."

We strongly recommend the enactment of legislation that would designate 418,200 acres as wilderness and 46,500 acres as potential wilderness additions at Great Smoky Mountains National Park. We also recommend that Congress provide for a $9.5 million payment to Swain County, North Carolina, in settlement of a longstanding agreement with the County. H.R. 1495 would designate wilderness and authorize a payment to Swain County. However, the bill differs from our recommendation in the area designated as wilderness and in management provisions for park lands. We recommend the enactment of H.R. 1495, if amended as discussed in this report.

Wilderness

H.R. 1495 would designate 467,000 acres as wilderness, and no potential wilderness. The area we recommend for wilderness designation is depicted on a map numbered 133/20,003-I and dated June 1987. The principal difference between the wilderness proposed in the bill and that which we propose is that 44,200 acres of former Tennessee Valley Authority (TVA) lands are designated wilderness in H.R. 1495 and are not so designated in our proposal. These lands were acquired in most cases subject to outstanding rights that include mineral rights, timber rights, rights to use as cemeteries, road access, and others that are inconsistent with wilderness. They clearly have wilderness character, however. We propose that these former TVA lands not be

designated wilderness, but that Congress designate them potential wilderness. Under that concept, we could add the land to wilderness administratively when the inconsistent rights are extinguished, but in the interim the land would be protected from development. Section 3 of the bill directs that rights and easements retained by TVA be transferred to the Department of the Interior. We have no objection to this provision, but we point out that it would not affect private rights remaining in the former TVA lands. We further recommend that lands adjoining the Cherokee Indian Reservation be designated as wilderness as proposed in H.R. 1495.

Cemetery Access

H.R. 1495 would require that the National Park Service continue to provide special access to the Hazel Creek cemeteries in accordance with the 1982 General Management Plan for the park. In general, that plan provides for continued maintenance of existing old roads at present standards and access to cemeteries by 4-wheel drive vehicles with advance scheduling by the cemetery visitors. This is our current practice, and we will continue it in accordance with the plan.

We would strongly oppose any requirement for road access to these cemeteries. Such a road would be up to 20 miles long, would traverse very rough terrain causing severe environmental impacts, and would cost an estimated $4 million to construct.

Payment to Swain County

The remaining provisions of H.R. 1495 deal with settlement of the 1943 agreement under which the Department of the Interior agreed to build a replacement road within the park for one that was to be flooded by Fontana Lake. Under the agreement Swain County and the State of North Carolina would build that part of the road outside the park and the National Park Service would build the part within the park. In the mid-1960's the National Park Service began construction of the road. The State and County had already acquired the right-of-way for and built the 2.6 miles of replacement road up to the park boundary. However, new concerns about the effect of the road on park resources as well as costs caused the Federal Government to discontinue the project.

Although as a matter of law the Government is not liable to pay Swain County anything, nevertheless the State and the County incurred certain costs in completing part of the road, acting on our promise in 1943 to build the remainder. Our information is that the County also incurred a net cost of $1.3 million over 40 years to pay for bonds used to build the original road that runs by Fontana Reservoir. If compounded, this would approximate a total of $9.5 million today. For the purpose of achieving a resolution to this long-standing issue, and subject to budget appropriation action, we have no objection to paying the County $9.5 million as required by the bill.

We note that the designation of wilderness would not take effect until Swain County receives the $9.5 million authorized in section 4, but in the interim the lands would be managed in accordance with the general management plan. Although the plan is consistent with wilderness management, we believe the Wilderness Act, rather than a plan, should be the fundamental guide to wilderness management. We recommend that wilderness designation be effective upon enactment of this legislation.

Finally, the bill would forgive repayment of a loan made to Swain County by the Farmers Home Administration of the Department of Agriculture for construction of a high school. We understand that the Department of Agriculture has notified the Committee of its opposition to this provision.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

William P. Horn

Assistant SECRETARY William P. Horn

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 23 1991

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
RECEIVED
JUL 23 1991
WASHINGTON, D.C. 20510

Honorable J. Bennett Johnston
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This responds to your request for our views on S. 693 and S. 695, bills to designate wilderness in the Great Smoky Mountains National Park, North Carolina and Tennessee.

We strongly recommend the enactment of legislation that would designate 418,200 acres as wilderness and 46,500 acres as potential wilderness additions at Great Smoky Mountains National Park. We also recommend that Congress provide for a $9.5 million payment to Swain County, North Carolina, in settlement of a longstanding agreement with the County. Both S. 693 and S. 695 would designate wilderness and authorize a payment to Swain County. However, the bills differ in the area designated as wilderness and in management provisions for park lands. We recommend the enactment of either bill, if amended as discussed in this report.

Wilderness

S. 693 would designate 467,000 acres as wilderness, and S. 695 would designate 400,000 acres as wilderness. Neither bill would designate potential wilderness. The principal difference between the wilderness proposed in the bills is that 44,200 acres of former Tennessee Valley Authority (TVA) lands are designated wilderness in S. 693 and are not so designated in S. 695. These lands were acquired in most cases subject to outstanding rights that include mineral rights, timber rights, rights to use as cemeteries, road access, and others that are inconsistent with wilderness. They clearly have wilderness character, however. We propose that these former TVA lands not be designated wilderness, but that Congress designate them potential wilderness. Under that concept, we could add the land to wilderness administratively when the inconsistent rights are extinguished, but in the interim the land would be protected from development. We further recommend that lands adjoining the Cherokee Indian Reservation be designated as wilderness as proposed in S. 693.

Cemetery Access

S. 695 would require the Federal Government to build a primitive road along the north shore of Fontana Lake in North Carolina to provide access to cemeteries in the Hazel Creek area of the park. Wilderness designated elsewhere in the park would not become effective until the road is completed. The bill authorizes the appropriation of $950,000 for the road.

S. 693 does not require a road, but it does require that the National Park Service continue to provide special access to the Hazel Creek cemeteries in accordance with the 1982 General Management Plan for the park. In general, that plan provides for continued maintenance of existing old roads at present standards and access to cemeteries by 4-wheel drive vehicles with advance scheduling by the cemetery visitors. This is our current practice, and we will continue it in accordance with the plan.

We strongly oppose the road requirement in S. 695. The road would be up to 20 miles long, would traverse very rough terrain causing severe environmental impacts, and would cost an estimated $4 million to construct.

Special Management Provisions

S. 695 contains provisions, not found in S. 693, that (1) require us to review policies on diseases, insects, and forest fires to protect nonwilderness lands, (2) disclaim any intent to authorize buffer zones adjacent to wilderness, and (3) authorize special access for the handicapped to wilderness. We recommend against these provisions. Our policy is to control fire, insect, and diseases within the park where necessary to protect property outside the park. Under park management policies, facilities for the handicapped are provided in developed areas and at the threshold of the backcountry, but not in the backcountry or wilderness itself.

S. 695 also authorizes the Secretary to place a historical marker at Soco Gap. No similar provision appears in S. 693. We have done no historical studies of Soco Gap, but we would not object to placing a marker there if a study indicated it was appropriate. The Blue Ridge Parkway runs through Soco Gap and no special authorization is necessary for us to erect an information sign on the parkway.

S. 693 contains a provision, not found in S. 695, requiring the lands that the bill earlier designates as wilderness to be managed in accordance with the 1982 General Management Plan for the park. Although the plan is consistent with wilderness management, we believe the Wilderness Act, rather than a plan, should be the fundamental guide to wilderness management. We recommend that this provision (section 6 of S. 693) not be adopted.

Payment to Swain County

The remaining provisions of S. 693 and S. 695 deal with settlement of the 1943 agreement under which the Department of the Interior agreed to build a replacement road within the park for one that was to be flooded by Fontana Lake. Under the agreement Swain County and the State of North Carolina would build that part of the road outside the park and the National Park Service would build the part within the park. In the mid-1960's the National Park Service began construction of the road. The State and County had already acquired the right-of-way for and built the 2.6 miles of replacement road up to the park boundary. However, new concerns about the effect of the road on park resources as well as costs caused the Federal Government to discontinue the project.

Although as a matter of law the Government is not liable to pay Swain County anything, nevertheless the State and the County incurred certain costs in completing part of the road, acting on our promise in 1943 to build the remainder. Our information is that the County also incurred a net cost of $1.3 million over 40 years to pay for bonds used to build the original road that runs by Fontana Reservoir. If compounded, this would approximate a total of $9.5 million today. For the purpose of achieving a resolution to this long-standing issue, and subject to budget appropriation action, we have no objection to paying the County $9.5 million as required by both bills.

The bills differ in two major respects concerning the settlement: S. 693 contains a statement of settlement, providing that the payment constitutes full settlement of all claims against the United States. S. 695 contains no such provision. We believe the provision is absolutely necessary if the Federal Government is to be required to make the payment to the County. Also, S. 695 prohibits payment of any appropriated funds to agents or attorneys in connection with settlement of the claim. S. 693 is silent on this point. We recommend that such a provision be included.

Finally, both bills would forgive repayment of a loan made to Swein County by the Farmers Home Administration of the Department of Agriculture for construction of a high school. S. 693 clearly includes this provision as part of the settlement of the 1943 agreement. Under S. 695, however, the loan forgiveness provision is independent of the settlement issue. We understand that the Department of Agriculture has notified the Committee of its opposition to this provision.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

William P Horn

ASSISTANT SECRETARY William P. Horn

MINORITY VIEWS OF MESSRS. McCLURE, DOMENICI, WALLOP, MURKOWSKI, NICKLES, AND HECHT

The action taken by the Committee in reporting the legislation favorably to the Senate is regrettable. While there was agreement on the parts of the legislation dealing with portions of the Great Smoky Mountains National Park in Tennessee, there was not agreement on a relatively small portion of the lands in North Carolina. The exclusion of that 46,000-acre tract from wilderness designation would have enabled us to join in favorably reporting this measure. We wish to emphasize that the tract is already within the national park and is being managed pursuant to the park's general management plan as a natural area for potential designation as wilderness. There is and will be no threat to the resources. There is in fact absolutely no reason to proceed with designation of that 46,000-acre tract.

Of additional concern to us is the unfortunate precedent which the Committee has established of ignoring the express wishes of a Senator elected by the people of a State over a land management decision in his State. This is even more egregious when in this situation, there is no suggestion of an overriding national interest to be served, nor any potential threat to the resources involved.

When this area was acquired for inclusion in the national park so that it could be preserved for the Nation as a whole, the residents were promised that they would have continued access to the cemeteries included in the park. They were also promised that someday a road would be built around the reservoir created behind Fontana Dam so that they would have improved access. The United States acquired their land, flooded their access to the cemeteries where their relatives are buried, and placed a once thriving community into a national park. The National Park Service has done what it can to keep faith by ferrying the residents across the reservoir periodically and transporting them to the cemeteries. While supporters of the bill claim that this access will continue, some local residents believe that is not the case.

This Committee has consistently deferred taking any action on measures which are internal to a State unless both the Senators from that State were in agreement. The senior Senator from North Carolina asked that the Committee either exclude this one area or defer consideration so he could continue to work with his constituents who believe their access to these cemeteries would be threatened. Whether they are right or wrong is irrelevant. That is what they believe. Until such time as both Senators from North Carolina are in agreement with respect to the designation of this area, we believe that no action should be taken. Again we repeat that there is no threat to the lands in question. They are within the national park and are being managed and will continue to be managed so as to preserve their character and potential for designation as wilder-

ness. The price for an essentially meaningless action is disregarding the concerns and fears of the residents in the area who believe that enactment will deprive them of access to the cemeteries where their parents, grandparents, and other relatives are buried; ignoring the request of the senior Senator who is seeking to represent his constituents; and permanently breaking faith with those residents by forever foreclosing the possibility that a road will be built around the reservoir. We submit that this is too high a price for a meaningless action.

JAMES A. MCCLURE.
PETE V. DOMENICI.
MALCOLM WALLOP.
FRANK H. MURKOWSKI.
DON NICKLES.
CHIC HECHT.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the act, H.R. 1495, as reported.

O